City of Clinton/Clinton Police Bargaining Unit 2005-2006 CEO 162 SECTOR 3

BEFORE THE IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Interest Arbitration between	)	
THE CITY OF CLINTON, IOWA	)	
Employer	)	**Marvin Hill, Jr. Neutral**
and	)	
CLINTON, IOWA POLICE BARGAINING UNIT ASSOCIATION	)	**Hearing date: May 30, 2006 Clinton, IA**
Union.	)	

APPEARANCES

FOR THE CITY: **William J. Sueppel**
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FOR THE POLICE: **G. Wylie Pillers, III PC**
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I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

The City of Clinton, IA (the "City," "Employer," or "Administration") and the Clinton Police Department bargaining unit (the "Union") have been in bargaining for a successor collective bargaining agreement, effective July 1, 2006, through June 30, 2007. All attempts at mediation, including fact-finding have failed at concluding an agreement. To this end a fact-finding hearing was held between these parties on February 21, 2006. Seven (7) impasse items were presented to fact-

finder Richard John Miller of Maple Grove, Minnesota. The parties have concluded an agreement on all items that were the subject of fact-finding except longevity and insurance.

The City. The City of Clinton, IA is an Iowa political subdivision on the Mississippi River with a population base of approximately 27,272 (2000 population) and covering approximately 35 square miles of incorporated city limits. Clinton has a total city budget of $32,606,280, and a police budget of $4,655,000 (City Ex. 10). By all accounts, the City's financial operation remains sound for the foreseeable future, despite constraints on the tax base such as residential rollbacks (City Ex. 11; Moody's Investors Service). Significantly, the City has not entered an inability-to-pay argument in this proceeding.

The Unit. The Clinton Police Bargaining Unit is comprised of the City of Clinton Police Department. The Department currently has a maximum authorized sworn manpower strength of 48 officers. The sworn officers in the bargaining unit consists of 26 patrolmen, 7 corporals and 7 sergeants. The unit also consists of 8 non-sworn officers, which are made up of two public-service officers (PSO), an animal control officer (ACO), receptionist, secretary, CID Specialist and a recording clerk

The Union's Final Offer. The Clinton Police Unit has adopted the Findings and Decision of the Fact-finder. Indeed, in its May 25, 2006, letter to Mr. Sueppel and City Attorney Matthew Brisch (Union Ex. 2), the Union declared "The Clinton Police Bargaining Unit's final offer will be based on the decision of the Fact-Finder. The Bargaining Unit has adopted the decision of the Fact-Finder which is as follows:"

1. Across-the-board wage increase of 3.25% for all employees in the bargaining unit.

2. A 1/4% step increase for all rank *and* longevity positions (i.e., 1/4% for steps and 1/4% for longevity positions).

3. The City's reimbursement to the employees for deductible payment to be eliminated from the collective bargaining agreement. The implementation of a prescription drug card added to the health plan, effective January 1, 2007, with the following co-payments:

   $5.00 – generic
   $20.00 – preferred/formulary brand
   $30.00 – non-preferred/non-formulary brand

4. No longevity increase for non-sworn employees.

5. No out-of-rank pay for sworn or non-sworn employees.

6. Maintain current language which provides that compensatory time may be accumulated by each officer to a maximum of 100 hours during the calendar year, with a maximum carryover of 50 hours of compensatory time to the next calendar year. (Union Ex. 2).

The City's Final Offer. On May 23, 2006, William J. Sueppel, counsel for the City, submitted the Employer's Final Offer which, in relevant part, reads as follows:

The City of Clinton proposes an across-the-board wage increase of 3.25% for all employees covered by the collective bargaining unit.

The City also proposes a .25% increase on each Rank Step. [There is no proposal for an increase on Longevity].

Additionally, the City of Clinton proposes that the City's reimbursement to the employee for health insurance deductible payments be eliminated from the contract, effective January 1, 2007.

The City further proposes the implementation of a prescription drug card added to the health plan effective January 1, 2007, with the following co-payments:

$5.00 – generic
$20.00 – preferred/formulary brand
$30.00 – non-preferred/non-formulary brand

The prescription co-payments shall *not* count toward deductibles and out-of-pocket maximum on the participant's health plan. If a generic or preferred brand is not available, the participant may apply to the City to receive reimbursement for the difference between the co-payment and the $5.00.

The City will also pay each employee a separate payment of $350.00 as a transitional payment to help offset the costs of the insurance changes.

The City of Clinton proposes no other charges to the existing contract, except as previously agreed to as the bargaining table. (Union Ex. 3).

II. ANALYSIS AND DISCUSSION

A. The Statute

The Iowa Code, Section 2.22 (9) (Binding Arbitration) lists the following criteria for interest arbitrators to apply:

9. The panel of Arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations

It is acknowledged by all interested parties, as well as the Iowa PERB, that the above criteria must be applied by a fact-finder when making a recommendation for a successor collective bargaining agreement, as well as an interest arbitrator. A careful reading of Mr. Miller's decision indicates that he remained faithful to the statute. While all the above criteria may not be mentioned in this award, for the record all factors were considered.

B. Background: Focus of the Interest Neutral in Formulating Recommendations and/or Interest Awards

What should be the focus of the interest neutral when formulating a fact-finding or arbitration award? Should the award reflect the evidence-record facts or should it reflect the position the parties would have reached had they been permitted to engage in economic warfare? Likewise, where fact-finding is mandated, should the fact-finder issue recommendations that will settle the dispute (i.e., a recommendation that both sides can live with and avoid arbitration) or, alternatively, should recommendations be drafted based only on the so-called hard facts (assuming, of course, that there are hard facts to be found)?

Where both parties have come to the bargaining and arbitration table with extreme positions, one arbitrator found (correctly, I believe) that the proper focus is to formulate an award based on "a position which both parties would have come to had they been able to reach an agreement themselves."[1] In another case, the arbitrator rejected the fact-finder's "recommendations based on

[1] *County of Blue Earth v. Law Enforcement Labor Serv., Inc.*, 90 LA 718, 719 (1988) (Rutrick, Arb.); *see also* 60 *City of Clinton v. Clinton Firefighters Ass'n, Local 9*, 72 LA 190 (1979) (Winton, Arb.) (the fact-finder declared

compromise in an attempt to gain the parties' support for an intermediate solution."[2] In the arbitrator's words, "this is a legitimate strategy for a Fact Finder, but not for an Arbitrator."[3] R. Theodore Clark of Seyfarth Shaw, Chicago, Illinois, has argued that the interest arbitrator should not award more than the employees would have been able to obtain if they had the right to strike and management had the right to take a strike.[4]

Arbitrators and advocates are unsure whether the object of the entire interest process is simply to achieve a decision rather than a strike, as is sometimes the case in grievance arbitration, or whether interest arbitration is really like mediation-arbitration, where, as noted by one practitioner, "what you do is to identify the range of expectations so that you will come up with a settlement that both sides can live with and where neither side is shocked at the result."[5] **While I do not advocate that interest neutrals issue decisions that surprise both parties (i.e., decisions outside the "range of expectations" or "outliers"), there is something to be said for attempting to determine whether the parties would have found themselves with the strike weapon at their disposal.** At times this would favor a large union and at other times the employer. **The job of an interest neutral, however, is not to equalize bargaining power, or to do "what is right" or act like a "circuit rider," dispensing his own notion of economic justice but, rather, to render an award applying the statutory criteria. At the same time, if the process is to work, "it must not yield substantially different results than could be obtained by the parties through**

"consideration was given to what the parties might have agreed to if negotiations had continued to a conclusion. In the final analysis, however, the Fact Finder must recommend what he considers to be RIGHT in this City at this time. . . ." *Id.* at 196.).

[2] *City of Blaine v. Minnesota Teamsters Union, Local 320*, 70 LA 549, 557 (1988) (Perretti, Arb.).

[3] *Id.*

[4] R.T. Clark, Jr., Interest Arbitration: Can the Public Sector Afford It? Developing Limitations on the Process: II. A Management Perspective, in Arbitration Issues for the 1980s, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators (J.L. Stern & B.D. Dennis, eds) 248, 256 (BNA Books, 1982). Clark referenced another commentator's suggestion that interest neutrals "must be able to suggest or order settlements of wage issues that would conform in some measure to what the situation would be had the parties been allowed the right to strike and the right to take the strike." *Id.*

See also Des Moines Transit Co. v. Amalgamated Ass'n of Am., Div., 441, 38 LA 666 (1962) (Flagler, Arb.) "It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to *either party* that which they could not have secured at the bargaining table." *Id.* at 671.

[5] See, Berkowitz, *Arbitration of Public-Sector Interest Disputes: Economics, Politics and Equity: Discussion, in* Arbitration–1976, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators (B.D. Dennis & G.C. Somers, etd) 159, 186 (BNA Books, 1976).

bargaining."[6] In this regard Arbitrator Harvey Nathan, in a 1988 arbitration under the Illinois statute, outlined the better view of an arbitrator's function as follows:

> [I]nterest arbitration is essentially a conservative process. While, obviously, value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor is it the function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to [the] parties' particular bargaining history. **The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves.** To do anything less would inhibit collective bargaining.[7]

C. Relevance of Internal vs. External Comparisons

Both parties have advanced arguments with respect to internal and external criteria. How significant is internal and external comparability as criteria in interest proceedings? In *Elk Grove Village & Metropolitan Alliance of Police (MAP)*(Goldstein, 1996), Chicago Arbitrator Elliott Goldstein noted that "the factor of internal comparability alone required selection of the Village's insurance proposal." Arbitrator Goldstein stressed that arbitrators have "uniformly recognized the need for uniformity in the administration of health insurance benefits." Similarly, in *Will County, Will County Sheriff & AFSCME Council 31* (Fleischli, 1996)(unpublished), Wisconsin Arbitrator George Fleischli observed that when an employer has established and maintained a consistent practice with regard to certain fringe benefits, such a health insurance, it "takes very compelling evidence" in the form of external comparisons to justify a deviation from that past practice.

I agree with those arbitrators who, with rare exceptions, find internal comparability equally or more compelling than external data.

D. Comparative Bench-Mark Jurisdictions

The parties are not in agreement regarding the bench-mark jurisdictions to include in making a comparative analysis. The City's comparable jurisdictions include the following:

City	Population	Bargaining-Unit Employees	Longevity
Muscatine	22,713	28	No*

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[6] *Arizona Pub. Serv. Co. v. Int'l Bhd. of Elec. Workers, Local 387*, 63 LA 1189, 1196 (1974) (Platt, Arb.).

[7] *Will County Bd. and Sheriff of Will County v. AFSCME Council 31, Local 2961*, Illinois State Labor Relations Board, (Nathan, Chair., Aug. 17, 1988) (unpublished).

See generally, Hill, Sinicropi and Evenson, Winning Arbitration Advocacy (BNA Books, 1998)(Chapter 9)(discussing the focus of the interest neutral).

Ottumwa	24,680	23	No*
Burlington	25,579	41	Yes
Marshalltown	26,057	42	No*
Clinton	27,772	47	Yes
Mason City	28,177	50	No*
Cedar Falls	36,343	37	Yes

* None specified in contract

The Union includes the following jurisdictions which are (with the exception of Ames and Fort Didge) in close proximity to Clinton:

De Witt	(18 miles west)
Bettendorf	(20 miles south)
Marion	(90 miles west)
Ames	(120 miles west)
Fort Dodge	(150 miles northwest)
Waterloo	(90 miles northwest)

The Fact-finder rules that "both of these comparability groups appear to have merit based on population, location, and number of bargaining units in comparison with Clinton." (*Miller* at 11). Mr. Miller did point out that there were only three reported wage settlements for fiscal year 2006, with Muscatine at 3.5%, Ottumwa (3.5%) and Burlington (2%). "Thus, external comparability has limited application in this case based on the small sampling of settlements among the comparable cities," in Mr. Miller's words. *Id.*

Recognizing that comparisons are sometimes fraught with problems, and that one should not use comparisons as the single determinant in a dispute (the statute precludes this result), the late Arbitrator Carlton Snow nevertheless noted the value of relevant comparisons in *City of Harve v. International Association of Firefighters, Local 601*, 76 LA (BNA) 789 (1979), when he stated:

> Comparisons with both other employees and other cities provide a dominant method for resolving wage disputes throughout the nation. As one writer observed, "the most powerful influence linking together separate wage bargains into an interdependent system is the force of equitable comparison." As Velben stated, "The aim of the individual is to obtain parity with those with whom he is accustomed to class himself." **Arbitrators have**

long used comparisons as a way of giving wage determinations some sense of rationality. Comparisons can provide a precision and objectivity that highlight the reasonableness or lack of it in a party's wage proposal. *Id.* at 791 (citations omitted; emphasis mine).

Having said this, one fallacy that, with exceptions, continues to be perpetuated in interest arbitration everywhere is there exists a single set of comparable bench-mark jurisdictions that can serve as a significant independent variable for determining economic issues. The underlying assumption is if City A's demographics (population, geography, tax revenue, etc.) are similar to the demographics of Cities B, C, D, E, F . . . n, then A's economic benefic package should also be similar. As the parties know, a bargaining unit's wages (and most other benefits) are determined by a host of exogenous (external) and endogenous (internal) variables, not the least of which is union density in a particular organization. The economic – non-economic matrix in any organization and industry is far more complex than viewing an "eyeball" histogram depicting what's going on in a contiguous bench-mark jurisdiction. As such, even if one can agree on relevant bench-mark jurisdictions to consult (whatever criteria is used for selection, be it population or geography), nothing is ever dispositive when it comes to making an award.

In summary, nothing in this statute prevents a neutral from referencing the other party's comparables in making an award. Indeed, this makes more sense than picking one side's comparables over the batch offered by the other side. Of course, the standard "fall back" was articulated by Arbitrator Herbert Berman in *City of Peru and Illinois Fraternal Order of Police Labor Council*, S-MA-93-153 (IL, 1995):

> An arbitrator must be mindful that within a large range of possibilities a party may have selected only those cities that support its positions. When in doubt, it makes sense to fall back on the comparables they themselves have selected. This cautious approach may also have the virtue of encouraging the parties to agree on comparables, thereby enhancing the possibility of settlement.

E. Substantive Issues

1. Longevity

The major issue in this arbitration is the longevity steps of the sworn police officers (see, City Ex. 2).

As noted, the Union is requesting that the longevity steps be increased by 0.25% on each step (thus going from 4.50% to 4.75%; City Ex. 2). The City is recommending no change in the 4.50% longevity step. The Employer's position is articulated as follows:

The Employer's Position. In support of its position the Employer notes that the City believes that an increase in longevity is not appropriate or justified at this time. Management argues

that a majority of the comparable cities have no specified longevity schedule in their contracts (*infra*, this opinion at 10). Of the comparable cities that do provide for a specific longevity schedule for its sworn officers (Cedar Falls, Burlington and Clinton), the existing longevity schedule at Clinton is superior by a wide margin.

Applying the statutory criteria, the City asserts giving a substantial pay increase to a few police officers is not in the public interest, nor does the welfare of the citizens of Clinton dictate that such an increase be granted. Management notes that it is not that the City cannot afford to pay the $19,000[8] that this individual item will cost. The .25% longevity increase will raise the overall wage increase to 4.5%. It is a question of how best to serve the citizens of Clinton and best to spend the tax dollars received from the citizens. The longevity proposal requested by the Union only really helps a few of the officers that happen to already be the best paid officers in the City due to their length of service. These top paid officers will receive a wage increase of 5% to 5.75% if the longevity increase is awarded. The wage increase without the longevity will be from 3.5% to 3.75%. In the City's eyes, there are better uses for these funds, such as new hires to bring on additional employees or to be used to replace and upgrade aging equipment. (*Brief for the Employer* at 2).

This proposal is simply too expensive for the number of employees involved, and is not justified given the longevity schedule of the comparable cities. Adding a longevity increase on top of the wage and rank increases and non-sworn pay adjustments already agreed to by the parties, provides a wage increase out of proportion to the comparable cities and to the wage increases provided to other city employees.

The City also points out that the fact-finder's recommendation is based on part on the compensation for the change in health insurance that he recommended. The parties have, argues Management, come to an agreement with respect to the changes in health insurance, as well as compensation, in order to assist the employees in the translation to the new health insurance. Specifically, in addition to meeting the health insurance changes on January 1, 2007, the parties have agreed to a wage increase which amounts to an across-the-board wage increase of approximately 3.5%, by accepting the fact-finder's recommendation of a 3.25% increase, along with the fact-finder's recommendation of a .25% increase to each step. Additionally, the City will pay each employee $350.00 as a one-time supplemental payment to assist the employees during the translation of the insurance charge, provided, of course, that its final offer on insurance is selected. In the Employer's view, the cost to the employees for the health insurance changes averages no more than $350.00 per person. The cost to the employee for the drug card at $5.00 per prescription is negligible for the vast majority of employees. The $350.00 supplemental payment that the City agreed to pay the employees will, in most circumstances, more than cover the additional costs that the employees will be incurring as a result of the insurance charges. (*Brief* at 3).

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[8] The City's numbers are used to cost the Union's longevity proposal. The current salary schedule (City Ex. 2 at 1), with longevity steps at 4.5%, rank steps at 4.75%, and wages at 3.25% (the projected increase), nets out at a cost increase of $66,016. With longevity steps separated by 4.75%, and everything else remaining the same, the total cost increase is $85,406 (City Ex. 2 at 2). The difference is $19,390. The Union has not challenged these figures.

In summary, the Administration asserts there is no compelling reason to alter the existing longevity schedule. As a practice longevity has, in recent years, fallen out of favor and has been eliminated by many, if not most, cities throughout the state. The city has agreed to keep longevity and has compensated its sworn officers, through the longevity payments, greater than and other comparable city. Additionally, the increase in longevity as proposed by the Union raises the average wage increase from 3.5% to 4.5%. In Management's eyes, there is no justification for the additional 1% increase, especially where the cost of this proposal alone is over $19,000. Also, the longevity increase, as proposed, by its very nature is weighted disproportionately heavy toward the long-time employees, to the detriment of the new employees. If the City is low with the comparability of wages, it would be in the early years of employment, not the last years of employment. The proposed longevity increase does not make economic sense and is not warranted by the comparables. The City sees no compelling reason to implement any increase to the longevity schedule and certainly sees no compelling reason to increase it by such a large percentage (*Brief* at 3).

For the above reasons, the City asserts the Union's proposal should be denied.

The Union's Position. The Union proposed to the fact-finder was a one-quarter percent (1/4%) step increase for all rank *and* longevity positions. As noted, Mr. Miller found that the increase was appropriate based upon all the facts and circumstances presented.

Analysis and Award. Of the relevant bench-mark jurisdictions, currently only three (3) cities have a longevity program: Cedar Falls, Burlington and Clinton. A comparison of the cities' programs in as follows:

	Longevity		
City	Years of Service	$/month	Annual Payment
Cedar Falls	Beginning 0 through 4 years	None	
	Beginning 5 through 7 years	$15.00	$180.00
	Beginning 8 through 10 years	$25.00	$300.00
	Beginning 11 through 13 years	$35.00	$425.00
	Beginning 14 through 16years	$45.00	$540.00
	Beginning 17 through 19 years	$55.00	$660.00
	Beginning 20 through 22 years	$65.00	$780.00
	Beginning 23 through 25 years	$75.00	$900.00
	Beginning 26 through 28 years	$85.00	$1,020.00
	Beginning 29 through 31 years	$95.00	$1,140.00
	Beginning 32 through 34 years	$105.00	$1,260.00
	Beginning 35 years and over	$115.00	$2,500.00
Burlington	After 5 years of continuous service		$300/year
	After 10 years		$450/year
	After 15 years		$550/year
	After 20 years		$750/year

	After 25 years	$850/year
	After 30 years	$1,125/year
Clinton	5-9 years	$375 annually
	10-14 years	$625 annually
	15-19 years	$875 annually
	20+years	$1,125 annually

(See, City Ex. No. 8)

While only two other cities in the Employer's bench-mark jurisdictions have longevity, the Union responds that a comparison of its bench-mark jurisdiction exhibit (Ex. 8) reveals that, on entry pay, Clinton is low relative to these cities. The exhibit shows the following rankings:

Salary Analysis

City	Entry pay Officer	10-year pay: Corporal	10-year pay: Sergeant
Clinton	$35,463 (5/10)	$37,059 (4/4)	$38,726 (9/9)
DeWitt	$36,212	$38,916	$41,704
Bettendorf	$36,525		$44,740
Mason City	$35,629		$47,694
Marion	$33,737		$45,386
Ames	$34,778	$43,084	
Fort Dodge	$34,778	$38,126	$41,787
Waterloo	$36,876		$52,000
Marshalltown	$34,299		$43,742
Ottumwa	$35,380		$40,705

(Union Ex. 8)

The Union's point is well taken. At the upper levels, Clinton is last in relevant salary among these benchmarks, at least when the Union's data is examined.

I also credit the Union's argument regarding comp time (*Brief for the Union* at 11-13). Here, the Union points out that in calendar year 2005, the Department accumulated 7,656 overtime hours. Based on an average of 39 regular sworn officers, this is an average of 196.3 overtime hours/officer per year, or 24½ days of comp time/year. At this rate, each officer in Clinton is required to work an

additional two days/month. This does have some consideration in supporting the fact-finder's decision on rank and longevity.

Significant in this decision is the *quid-pro-quo* reasoning Mr. Miller employed to arrive at a recommendation (*infra*, this opinion at 13). It is this analysis that tips the balance in the Union's favor.

2. Health Insurance

Background. The City has always provided and paid for all health insurance benefits to the Department's employees. At the present time, this includes the Police Department, Fire Department and Street Department. The current health insurance benefit includes a $250/$500 deductible (single/family) which, in the past, has been reimbursed by the City to the employee (Union Ex. 11, Current Plan). In addition, the City has paid and/or reimburses the Police, Fire and Street Department employees for the costs of prescription drugs. This policy has been in effect since the first collective bargaining agreement in the mid 1970s (*Brief for the Union* at 9).

At the initiation of bargaining negotiations for the July 1, 2006, contract, the City of Clinton proposed that the employees pick up and pay the current deductible ($250/$500) and all of the prescription drug costs. The City has proposed a prescription drug plan whereby the costs of the drugs to the employees would be $5.00 for Generic, $20.00 for Preferred Brand/Formulary and $30.00 for Non-Preferred/Non-Formulary.

Based on this information and assuming that each employee will utilize the benefit of the deductible, the City could save in excess of $47,000 in health insurance and prescription drug benefits, in the Union's opinion (*Brief for the Union* at 10; Union Ex. 12-A). In the Union's view, the savings to the City are more than offset by granting the Union's bargaining demands on longevity. The savings to the City are approximately 2.47% (as a percentage of payroll), the Union points out. Thus the 1/4% given by the fact-finder and adopted by the Union is more than reasonable. In the Union's words:

> The 1/4%, in essence, gives us something back in our pocket to offset, or at least help reimburse us for picking up the cost of this insurance. It will not be a total compensation, it will be something. It's on the pay scale, rank and longevity, which will go up year to year. But, it's a small amount compared to what the City is going to save. It is quite a trade off.

The Fact-finding Recommendation of Mr. Miller. At fact-finding, the Union proposed no change from the current insurance contract language.

At fact-finding the Employer proposed that the City's reimbursement to the employee for deductible payment be eliminated from the contract. The City further proposed at fact-finding the

implementation of a prescription drug card added to the health plan effective January 1, 2007, with the following co-payments: $5.00 – generic; $20.00 – preferred brand. formulary brand; $30.00 – non-preferred brand/non-formulary brand. Also as part of the Employer's offer, the prescription co-payments shall not count towards deductibles and out-of-pocket maximum on the participant's health plan. Further, if a generic or preferred brand is not available, the participant may apply to the City to receive reimbursement for the difference between the co-payment and $5.00. (*Fact-finding Decision* at 3-4).

In his fact-finding recommendation, Mr. Miller concluded as follows:

> The evidence establishes that Clinton's current health insurance plan is far superior to any of the reported comparable cities. All of the reported cities require their employees to either pay for single and family premiums, deductibles, co-pays or drug card. The only exception is Clinton. (City Ex. 7). **Clearly, external comparability shows that some change is warranted in the City's current health insurance plan.**
>
> The parties have been unable to agree to the terms of an adequate compensation or reimbursement for assumption of the deductible and out-of-pocket maximum payments. Accordingly, the City, who is seeking such change bears a heavy burden of persuasion. The evidence and arguments offered by the City for such change in the health insurance plan were compelling in light of internal and external comparability. This compelling showing, however, is not enough. **Since the proposed significant health insurance change surfaced in negotiations, there must be an equitable *quid pro quo* for some other concession, with the evidence in support of the change showing what the parties would have deemed to be an appropriate trade-off.** The City failed to provide any justifiable equitable *quid pro quo*. Most certainly, a recommended wage increase of 3.25%, standing alone, is not an adequate trade-off in light of the wage settlement trend among the comparable cities.
>
> **The fact-finder, however, has provided this equitable *quid pro quo* by recommending a step increase of .25%, which is estimated by the City to cost $20,868 (City Ex. 2) and by the Union at $24,532 (Union Ex. #11). This should adequately offset the cost to unit employees for acceptance of the Employer's proposed health insurance plan. (*Miller* at 12-13).**

The City's Response. The City's response is outlined in Mr. Sueppel's *Brief* at 2-3:

> It [the Union's longevity proposal] serves no justifiable goal, especially in light of the other concessions and compromises the parties have made regarding wages and offsets for the health insurance charges.
>
> **Furthermore, it would appear that the Fact Finder's recommendation is based in part on the compensation for the change in health care insurance that he**

recommended. The City and the Union have come to an agreement with regard to the changes in health insurance, as well as compensation, in order to assist the employees in the transition to the new health insurance. In addition to meeting the health insurance changes on January 1, 2007, the City and the Union have agreed to a wage increase which amounts to an across-the-board wage increase of approximately 3.25%, by accepting the Fact Finder's recommendation of a .25% increase to each rank step. Additionally, the City will pay each employee $350.00 as a one-time supplemental payment to assist the employee during the transition of the insurance charges. The cost to the employees for the health insurance changes averages no more than $350.00 per person. The cost to the employee for the drug card at $5.00 per prescription is negligible for the vast majority of employees. The $350.00 supplemental payment that the City agreed to pay the employees will, in most circumstances, more than cover the additional costs that the employees will be incurring as a result of the insurance charges.

In its *Brief* at 9 the Union declares that it would accept the Employer's insurance proposal as a *quid pro quo* to a step increase in the rank *and* longevity payments to the officers. In the Union's words:

> The Union's position has been that they would be willing to accept the adjustments proposed in the health insurance program if the City would, as a *quid-pro-quo*, grant a step increase in the *rank and longevity payments* to the officers. (*Brief for the Union* at 9).

The City's Insurance Proposal is a Breakthrough Item. The Administration's insurance proposes a co-called "break-through item" or significant change in an existing benefit scheme, namely, that the successor collective bargaining agreement contain, for the first time, the following:

> [T]he City's reimbursement to the employee for health insurance deductible payments be eliminated from the contract, effective January 1, 2007.
>
> [T]he implementation of a prescription drug card added to the health plan effective January 1, 2007, with the following co-payments:
>
> $5.00 – generic
> $20.00 – preferred/formulary brand
> $30.00 – non-preferred/non-formulary brand
>
> The prescription co-payments shall *not* count toward deductibles and out-of-pocket maximum on the participant's health plan. If a generic or preferred brand is not available, the participant may apply to the City to receive reimbursement for the difference between the co-payment and the $5.00.

* * *

There is no question that currently the City of Clinton has one of the most generous health insurance programs both in the State of Iowa and, also, relative to other large cities in America. In the relevant bench-mark jurisdictions the numbers with respect to employee contributions are as follows:

EMPLOYEE INSURANCE CONTRIBUTIONS

City	Employee Contribution
Marshalltown	15% of single and dependent coverage premium
Muscatine	5% of the dependent coverage premium
Ottumwa	20% of single and dependent coverage premium
Cedar Falls	$154.54 for 100/200 deductible $24.32 for 500/1,000 deductible
Mason City	$25 for family & single coverage
Burlington	$15.00 office visit co-pay; $5.00/$20.00/$35.00 drug card
Clinton	No contribution by employees; City pays 100% of employee's single and family coverage

(City Ex. 9).

Plans where the employer "pays everything," with no contributions by employees, are rare. There is also no serious dispute that with insurance costs increasing at exponential rates, private- and public-sector employers are seeking to shift some of the burden to employees. Gone are the days where employers pay the "full boat" of insurance costs. In this respect, employee organizations are on their "last legs" of holding on to an employer-pay-all insurance provision, at least when external data is considered. And there is reason to believe that Mr. Miller was coming from this position when he drafted his recommendations in the City's favor.

Still, the Administration, as the moving party, has the burden to plead and prove that sufficient justification exists for an interest arbitrator/fact-finder to award (recommend) a "breakthrough" item such as its proposal in this case. See, *City of DeKalb* (Goldstein, June 9, 1988) (where the Arbitrator stated: "[i]nterest arbitration . . . is designed to merely maintain the status quo and keep the parties in an equitable and fair relationship, according to the statutory criteria."); *Village of Arlington Heights and IAFF* (Briggs, January 29, 1991)("Interest arbitration is artificial. It is a substitute for the real thing - a voluntary settlement between the parties themselves through the collective bargaining process. Thus, the primary function of an interest arbitrator is to approximate through the decisions what the parties would have agreed to had they been able to settle the issue

themselves. It is therefore appropriate for an interest arbitrator to evaluate the traditional factors which affect the outcome of public sector labor negotiations and to shape the interest arbitration award accordingly. . . . It is important to recognize the nature of such a task. It is simply educated guess work, for two reasons. First, the interest arbitrator must essentially guess what the parties would have agreed to, subject to the traditional influences, market and otherwise. Second, the interest arbitrator must evaluate the influences themselves, most of which are extremely complex and ill-specified. . . . *the party wishing to change the status quo must present compelling reasons to do so."* (Emphasis added)); *Will County and MAP, Chapter 123* (McAlpin, October, 1998)("When one side wished to deviate from the *status quo* . . . the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship.").

Arbitrator Elliot Goldstein explained what the proponent of a breakthrough change must show as follows:

> In order to obtain a change in interest arbitration, the party seeking the change must at minimum prove:
>
> > (1) that the old system or procedure has not worked as anticipated when originally agreed to;
> >
> > (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union); and
> >
> > (3) that the party seeking the change must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process.

In a prior case I have noted that an arbitrator should not upset prior quid pro quos:

> **A neutral should keep in mind that, at one time a party may have "paid dearly" for a particular item and, thus, should proceed with caution before drafting an award that would upset the "quid pro quo."** In this respect, the parties' bargaining history may be particularly important in formulating fact-finding recommendations or interest awards. For example, a party desiring an insurance package where the employer pays the full cost of coverage, with no employee deductible, may elect to take a relatively small salary increase in return for such a package. In a fact-finding proceeding the following year, it is argued that the employees have fallen behind and, thus a substantial salary adjustment must be granted to remove this inequity.

After posing the above question, my argument is that arbitrators and fact-finders must take into account the prior bargaining that led up to the current contract, otherwise

irreparable damages may be done to the parties' collective bargaining relationship. Simply stated, concessions made in good faith at the bargaining table should not be used as a starting base to gain additional contract concessions from a neutral. Both labor and management should fear neutrals that do not take into account the "deals that are cut" in prior negotiations. What was gained at bargaining should not be lost the following year by arbitral fiat. Nothing can be more detrimental to good faith negotiations.

See, Bettendorf Community School District and Bettendorf Education Association (February 2, 1991)(unpublished)(emphasis mine).

Mr. Miller, in his fact-finding decision, also applied this principle. His reasoning is appropriate to quote in this dispute:

> Interest fact-finding and arbitration often confronts neutrals with resolving demands that represent innovation and/or significant structural changes to an agreement previously negotiated by the parties. Such situations should be approached with extreme caution. Accepting such demands too readily may well result in establishing a new or substantially modified agreement provision that the party seeking change would not have been able to achieve in face-to-face negotiations. Such a result is contrary to the fundamental objective of fact-finding and interest arbitration. Accordingly, the party seeking such changes bears a heavy burden of persuasion. The evidence and arguments by the party seeking change should be compelling. In addition, since the proposed significant change surfaces in negotiations, there must be an equitable quid-pro-quo for some other concession, with the evidence in support of the change showing what the parties would have deemed to be an appropriate compromise or trade-off. Absent such strong evidence in support of innovative or significant structural change, demands of this nature should ordinarily be rejected by neutrals and left to the parties to resolve in future rounds of collective bargaining negotiation.
>
> **The City has proposed a significant change in the health insurance plan language.** With regard to the first factor under Section 20.22(9), past bargaining history established that the City has since the first collective bargaining agreement in the mid-70's provided all of the health insurance benefits to City employees, including the Police Department, Fire Department and Street Department. (*Miller* at 7-8).
>
> * * *

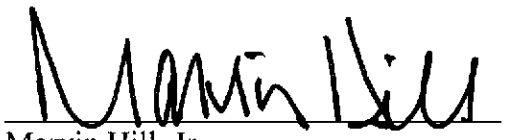
In light of my decision on the longevity issue (Union/Fact-finder's position), I also award the Union's final offer (reflective of Mr. Miller's decision) on health insurance. Again, the Union's position at fact-finding was that it could accept the Employer's "give back" insurance proposal as a *quid-pro-quo* for its .25 (1/4%) step increase for rank *and* longevity positions. Like the Union, I do not view a one-time $350.00 payment as a sufficient quid-pro-quo for the changes insurance that will be initiated in the successor collective bargaining agreement.

For the above reasons, the following award is entered:

V. AWARD

The Union's position on both issues, reflective of Mr. Miller's fact-finding decision, is awarded.

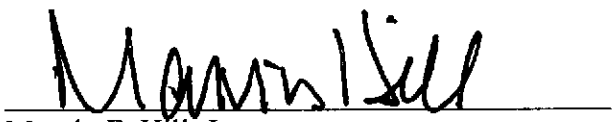
Dated this 4th day of June, 2006
at DeKalb, IL, 60115.



Marvin Hill, Jr.
Arbitrator

CERTIFICATE OF SERVICE

I certify that on I served the foregoing fact-finding report upon each on the parties' representatives by personally mailing a copy to them at their respective addresses noted in the Appearance section of this award. I further certify that on, I personally mailed a copy to Sue Bolte of the Iowa Public Employment Relations Board (PERB), 510 East 12th Street, Ste 1B, Des Moines, IA, 50319.



Marvin F. Hill, Jr.
Arbitrator